

### **REMARKS**

Claims 1-36 are pending in this application. One or more of the claims pending in this application have been amended. Applicant submits that all of the amendments listed herein are fully supported by the application as filed such that no new matter is introduced by this amendment.

Claims 21-36 were withdrawn from consideration by the Examiner. The Office Action states at page 2 that Claims 21-36 are directed to an invention that is independent or distinct from the invention originally claimed. However, Applicant notes that Claim 27 indirectly depends from Claim 1 (not Claim 21) and therefore should not be subject to restriction. Accordingly, Applicant elects without traverse the invention of Group 1, which includes Claims 1-20 and 27.

Further, because Claim 21 has been amended to depend from Claim 1 and therefore contains all the limitations of Claim 1, Applicant reserves the right to have Claims 21-26 and 28-36 reinstated upon allowance of Claim 1 and respectfully requests the Examiner to automatically reinstate Claims 21-26 and 28-36 upon allowance of Claim 1.

Claims 1-4 and 12-19 stand rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent Application Publication No. 2003/00217745 ("Freeman") in view of United States Patent Application Publication No. 2002/0161346 ("Lockwood"). Claims 5-11 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman in view of Lockwood and further in view of German Patent No. DE3935818 ("Neher").

Applicant submits that the rejection of Claim 1 over Freeman and Lockwood is improper because the Office Action fails to satisfy the burden of proving that Freeman and Lockwood, either individually or in combination, disclose, suggest, or render obvious all of the limitations recited in Claim 1.

Claim 1 recites an apparatus for aspirating, irrigating and/or cleansing wounds, comprising:

a fluid flow path, comprising a conformable wound dressing, having a backing layer which is capable of forming a relatively fluid-tight seal or closure over a wound, at least one inlet passageway in communication with a space under the backing layer and at least one offtake passageway in communication with the space under the backing layer;

a fluid reservoir in flow communication with the inlet passageway configured to provide irrigant to the wound;

means for supplying thermal energy to the fluid in the wound,

means for providing simultaneous aspiration and irrigation of the wound such that irrigant may be supplied to fill the flow path from the fluid reservoir via the inlet passageway while fluid including wound exudate is aspirated by the first fluid moving device through the offtake passageway; and

a regulator in communication with at least one of the inlet passageway and the offtake passageway and configured to at least regulate a rate of fluid flowing through at least one of the inlet passageway and the offtake passageway;

wherein:

the means for providing simultaneous aspiration and irrigation of the wound comprises a first fluid moving device applied downstream of and away from the wound dressing and is configured to apply negative pressure to the wound; and

the regulator is configured to hold negative pressure on the wound at a steady level while simultaneous aspiration and irrigation is provided to the wound.

The Office Action states at page 6 that Lockwood teaches a wound treatment apparatus comprising a switch valve 66 (fig. 1) that is a regulator coupled to both the inlet passageway and the offtake passageway regulating a rate of fluid flowing through the inlet passageway and the offtake passageway necessarily controlling the speed of the fluid moving device and fully capable of holding negative pressure on the wound at a steady level while simultaneous aspiration and irrigation is provided to the wound (page 3, [0027]).

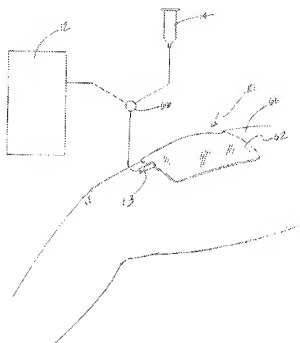
The Office Action further states at page 7 that it would have been obvious to one of ordinary skill in the art at the time the invention was made to supply the apparatus of Freeman with the regulator, as taught by Lockwood in order to allow a user to switch between the use of the vacuum source and the irrigation source, as motivated by Lockwood (page 6, [0087], lines 1-3).

However, Applicant submits that the limitations of Claim 1 would not have been obvious to one of ordinary skill in the art in view of Freeman and Lockwood because, as mentioned, the combination of Freeman and Lockwood does not disclose, suggest, or render obvious, *inter alia*, either of the following limitations:

- *means for providing simultaneous aspiration and irrigation of the wound* such that irrigant may be supplied to fill the flow path from the fluid reservoir via the inlet passageway *while* fluid including wound exudate is aspirated by the first fluid moving device through the offtake passageway; or
- a regulator in communication with at least one of the inlet passageway and the offtake passageway and configured to at least regulate a rate of fluid flowing through at least one of the inlet passageway and the offtake passageway, *wherein the regulator is configured to hold negative pressure on the wound at a steady level while simultaneous aspiration and irrigation is provided to the wound.*

First, the Office Action states at page 6 that Freeman does not expressly disclose the apparatus comprising a regulator in communication with at least one of the inlet passageway and the offtake passageway. In Lockwood, feature 66 that the Office Action states discloses or suggests the regulator of Claim 1 is described at paragraph [0087] of Lockwood as a “switch valve” that “allow[s] a user to *switch between* the use of the vacuum source 12 and the irrigation source 14.” (italics added). This is consistent with the illustration of the switch valve in Figure 1 of Lockwood, reproduced below for reference.

In Figure 1, the switch valve 66 is positioned at the junction of a first tube connecting the switch valve 66 to a vacuum source 12 and a second tube connecting the switch valve 66 to an irrigation source 14.



Because the tube from the vacuum source and the tube from the irrigation source merge at the switch valve 66 into one tube, and it is that one tube that connects the switch valve 66 to the wound dressing, it is not feasible or possible for the apparatus of Lockwood, having the switch valve 66 that *switches between* the use of the vacuum source 12 and the irrigation source 14, to provide aspiration at the same time irrigation is provided to the wound. That is, it is not possible for the apparatus of Lockwood or the switch valve 66 to provide simultaneous aspiration and irrigation, much less holding negative pressure on the wound *at a steady level* while simultaneous aspiration and irrigation is provided to the wound, as is recited in Claim 1.

Additionally, the Office Action fails to provide any rationale or discussion as to how Lockwood's switch valve 66 could be used in the tissue removal device of Freeman to provide simultaneous aspiration and irrigation or to hold negative pressure on the wound *at a steady level* while simultaneous aspiration and irrigation is provided to the wound, as is recited in Claim 1

Therefore, Applicant submits that the Office Action does not satisfy the burden of proving that Freeman and Lockwood, either individually or in combination, disclose, suggest, or render obvious all of the limitations recited in Claim 1. For at least these reasons, and also because each of the claims depending from Claim 1 recite additional patentable limitations not disclosed, suggested, or rendered obvious by the cited references, Applicant submits that all claims depending from Claim 1 are also patentable over the cited references.

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*No Disclaimers or Disavowals*

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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